

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
MDL No. 3076
Case No. 1:23-md-03076-KMM**

IN RE:

FTX Cryptocurrency Exchange Collapse Litigation

This Document Relates To:

Garrison v. Bankman-Fried,
Case No. 22-cv-23753-KMM

Garrison v. Ohtani,
No. 23-cv-23064-KMM

Garrison v. Golden State Warriors, LLC,
No. 23-cv-23084-KMM

Norris v. Brady,
No. 23-cv-20439-KMM

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**THE SPORTS & ENTERTAINER DEFENDANTS'
MOTION TO EXTEND DISCOVERY STAY**

Discovery in this action is currently stayed. ECF No. 152 (“Stay Order”). The Court authorized Plaintiffs to seek to lift the stay after September 19, 2023. *Id.* They have not done so, which confirms discovery remains stayed. Nonetheless, in accordance with the Court’s Stay Order, and consistent with the *Government’s Motion to Stay* (ECF No. 247) filed by the United States Attorney for the Southern District of New York, the Sports & Entertainer Defendants respectfully request that the Court expressly extend the existing stay of all discovery in the action against them until their motions to dismiss the *[Corrected] Administrative Class Action Complaint and Demand for Jury Trial – Promoters and Digital Creator Defendants* (“CAC”; ECF No. 179) have been adjudicated. Discovery should not go forward unless and until the Court finds that Plaintiffs have stated a claim upon which relief can be granted.

All of the reasons to stay discovery set forth in the S&E Defendants’ *Renewed Motion to Stay Discovery* (ECF No. 124), incorporated by reference herein, remain applicable. This proceeding is still exactly the type of case where a stay of discovery pending rulings on case-dispositive motions to dismiss is warranted: one raising novel, unfounded claims in unquestionably costly litigation against multiple defendants. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997) (“Facial challenges to the legal sufficiency of a claim … should … be resolved before discovery begins.”).

The reasons that warranted the existing stay have been buttressed by the *Government’s Motion to Stay*, which seeks to stay all discovery so as to not interfere with the criminal prosecution of Defendant Sam Bankman-Fried, on whom the central blame for the FTX implosion relies. *See Government’s Motion to Stay* at 6¹ (summarizing the indictment counts against Bankman-Fried); *see also Renewed Motion to Stay* at 7-8 (noting the criminal proceedings arising from the fact that

¹ Page references are to the ECF “Page” numbering in the file stamps at the top of the documents.

“every FTX Insider Defendant is either subject to criminal investigation or has already pled guilty for the massive fraud that was FTX” as one of the many bases to stay discovery).

In addition, while the S&E Defendants were forced by procedural circumstances to address what they *expected* the claims brought against them to be in the CAC at the time of the *Renewed Motion to Stay*, now the Court has both the CAC and the S&E Defendants’ motions to dismiss before it. *See* ECF Nos. 268, 270-75, 277-79. As expected, Plaintiffs’ allegations in the CAC have not materially changed; once again, Plaintiffs allege only that the S&E Defendants participated in routine and generic advertising efforts that neither mentioned any alleged securities nor included fraudulent or deceptive statements. This underscores the core truth stated in the *Renewed Motion to Stay*:

FTX’s downfall was caused by the secret machinations of a small handful of “FTX Insider Defendants,” who lied to Congress, auditors, regulators, investors, and customers across-the-board in committing their multi-billion-dollar fraud. That massive fraud, in which the S&E Defendants had no alleged (or actual) role, renders Plaintiffs’ core theory not only novel – which alone would warrant a stay of discovery – but exceedingly implausible.

Id. at 4. The *Government’s Motion to Stay* further recognizes this reality, pointing out that “the Indictment in the Criminal Action alleges that some of these groups [of defendants in the MDL], notably the investors,” which include certain of the S&E Defendants, “were victims of the fraudulent scheme rather than being liable for it.” *Id.* at 5. And, the S&E Defendants’ motions to dismiss show why this reality – as pled by Plaintiffs themselves – cannot give rise to any viable claim against any S&E Defendant. *See, e.g.*, ECF No. 271 at 13 (“Despite more than 850 paragraphs of allegations totaling 312 pages, Plaintiffs still fail to plausibly allege causation—or, indeed, the elements of any of their claims. Plaintiffs do not allege any Movant ever mentioned either of FTX’s alleged unregistered securities, YBAs or FTT.”).

Notably, Plaintiffs do not oppose the Government’s motion to stay the claims against the FTX Insiders, but do oppose the request with respect to all of their other claims. *See Government’s*

Motion to Stay at 3-4. But, Plaintiffs have never provided any legitimate ground to allow them to take discovery until they have actually stated a claim. *See generally Reply in Support of the Sports & Entertainer Defendants' Renewed Motion to Stay Discovery* (ECF No. 149).

As has been true since Plaintiffs first filed their claims against the S&E Defendants, this is an action fishing for a non-existent legal theory to blame the S&E Defendants for FTX's implosion. Only if Plaintiffs can show the existence of such a theory – and the S&E Defendants' motions to dismiss show they cannot – could Plaintiffs be entitled to engage in discovery. Accordingly, the existing discovery stay should remain in place and be lifted only in the event Plaintiffs meet their burden of showing that they can state a viable claim against any of the S&E Defendants.

WHEREFORE, the S&E Defendants respectfully request that the Court extend the existing discovery stay through the adjudication of their motions to dismiss and grant them such other and further relief as the Court deems just and proper.

Local Rule 7.1(a)(3) Certification

At the Initial Conference on June 21, 2023, Plaintiffs' counsel stated that they oppose a discovery stay, *see* Tr. at 31-33, in response to which the Court ordered the S&E Defendants to move to stay discovery within 21 days of the Initial Conference, *see* ECF 61. The *Government's Motion to Stay* (filed Sept. 16, 2023) re-confirms Plaintiffs' position that discovery – except as to the FTX insider defendants – should not be stayed. *See id.* at 3-4. Finally, on September 26, 2023, Zachary Lipshultz, Esq., counsel for certain of the S&E Defendants, conferred by e-mail with Plaintiffs' counsel with respect to the S&E Defendants' request and was informed that Class Counsel oppose a blanket stay.

Dated: September 26, 2023

Respectfully submitted,

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